Supreme Court, U.S.
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No. 02-___

IN THE

Supreme Court of the United States

UNITED FOOD & COMMERCIAL WORKERS INTERNATIONAL UNION, AFL-CIO-CLC, LOCAL 1445,
Petitioner,

v.

POLAND SPRING CORPORATION,
Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the First Circuit

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PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether the First Circuit's *S.D. Warren/Georgia-Pacific* line of cases—pursuant to which that court vacates labor arbitration awards on the ground that the arbitrator has misread the labor contract where, on the court's reading, the contract's literal language leaves no room for an arbitral reading—is contrary to this Court's cases limiting judicial review of arbitration awards, which hold that "a court should not reject an award on the ground that the arbitrator has misread the contract," *Paperworkers v. Misco, Inc.*, 484 U.S. 29, 38 (1987).

PARTIES TO THE PROCEEDING

The caption of the case includes all parties to the proceeding in the district court and court of appeals.

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PETITION FOR A WRIT OF CERTIORARI

United Food & Commercial Workers International Union, AFL-CIO-CLC, Local 1445, petitions for a writ of certiorari to review the decision and judgment of the United States Court of Appeals for the First Circuit in *Poland Spring Corp. v. United Food & Commercial Workers International Union, AFL-CIO-CLC, Local 1445*, First Circuit No. 02-1064 (Dec. 24, 2002).

OPINIONS BELOW

The opinion of the court of appeals is reported at 314 F.3d 29 and is attached as Appendix A, pp. 1a-25a. The opinion of the district court is reported at 179 F.Supp.2d 1 and is

attached as Appendix B, pp. 26a-28a. The order of the court of appeals denying rehearing is reported at 317 F.2d 350 and is attached as Appendix C, p. 29a. The decision of the arbitrator is unreported and is attached as Appendix D, pp. 32a-48a.

JURISDICTION

The judgment of the court of appeals was entered on December 24, 2002. A timely petition for rehearing was denied on January 22, 2003. On April 14, 2003, Justice Souter extended the time within which to file a petition for a writ of certiorari to and including May 22, 2003. The jurisdiction of this Court in invoked under 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS INVOLVED

Section 301(a) of the Labor Management Relations Act, 29 U.S.C. § 185(a), provides:

> Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this Act, or between any such labor organizations, may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties.

Section 203(d) of the Labor Management Relations Act, 29 U.S.C. § 173(d), provides in pertinent part:

> Final adjustment by a method agreed upon by the parties is declared to be the desirable method for settlement of grievance disputes arising over the application or interpretation of an existing collective-bargain ing agreement.

STATEMENT OF THE CASE

The instant case arises out of an arbitration pursuant to the grievance-arbitration procedures established by a collective

bargaining agreement in which the arbitrator found that the employer had violated the agreement by discharging an employee and ordered the employer to reinstate the employee with a limited amount of backpay. The employer brought suit to vacate the award, and the court below did vacate the award on the ground that, as the court read the agreement, the award was contrary to the plain contractual language.

1. The collective bargaining agreement between the Poland Spring Corporation and United Food & Commercial Workers International Union, AFL-CIO-CLC, Local 1445, contains a grievance-arbitration procedure for the resolution of "differences [that] arise . . . between the Employer and the Union as to the meaning or application of the provisions of the Agreement." Pet. App. 51a. In its substantive terms relevant, here the agreement provides that "[d]iscipline and discharge shall only occur for just cause," and then sets out a listing of twenty-one types of employee conduct that would constitute "just cause for discharge." *Id.* at 50a-51a. Among the twenty-one types of conduct—which range from "loafing" and "lack of cleanliness" to "taking a bribe" and "fighting"—is "insubordination." *Id.*

These provisions of the collective bargaining agreement came into play when Poland Spring discharged Leo Beaupre.

"The incident which lead to Beaupre's termination occurred on the night shift" when "a group of employees got together and began playfully teasing [Beaupre's supervisor Mike] Aresnault." Pet. App. 2a. Although "[t]he employees teased Aresnault rather crudely about his recent promotion," he "did not appear offended at first" and "actually joined in the ribbing." *Id.* "Predictably, this spirit of jocularity did not last," and "Arsenault suddenly 'became unglued,' stated 'that will be enough,' and ordered everyone back to work." *Id.*

"When the banter ended, Arsenault directed Beaupre and another worker to go into the filler room and help clean up

stray bottles that were on the floor." Pet. App. 2a. "Beaupre explained to Arsenault that due to an asthmatic condition, he could not work in the filler room," and Arsenault instead ordered Beaupre to "clean bottles out from underneath the accumulation table," a "task [that] would require Beaupre to crawl under the accumulation table, which stands on legs only a few feet off the floor." *Id.* at 3a.

"Beaupre refused to follow this directive from Arsenault, telling Arsenault that his 'crawling days [were] over; it's hard for me to crawl into bed [and] hard for me to crawl out of bed.'" Pet. App. 3a. Beaupre continued to refuse to comply with the order, although Arsenault warned him that he could be discharged for insubordination. *Id.* And, Beaupre once again refused to comply when Arsenault enlisted another supervisor to join in ordering Beaupre to "pick up the bottles as directed." *Id.*

In the end, the Company did discharge Beaupre for refusing to comply with the order. Pet. App. 4a.

When the validity of the discharge could not be resolved through the grievance procedure, the Union and the Company agreed to submit the following two issues to the arbitrator for resolution:

> "Did the Company violate the contract by discharging Leo Beaupre?
>
> "If so, what shall be the remedy?" Pet. App. 33a.

The arbitrator answered these two questions as follows:

> "Because the supervisor's misbehavior contributed to the initial breakdown in the proper relationship between supervisor and employee, the Company violated the contract by discharging Leo Beaupre as a consequence of the February 5 incident.
>
> "The Company shall reduce the grievant's discharge to a suspension of two weeks without pay. The Company

> shall reinstate the grievant and make him whole for pay and benefits he lost due to the termination of his employment without just cause." *Id.* at 32a.

In rejecting the Company's argument that "Article 32 . . . clearly and unambiguously states that . . . an act of insubordination . . . constitutes just cause for termination," Pet. App. 46a, the arbitrator explained:

> "That language may well establish that in clear, straightforward cases of insubordination, without mitigating considerations, the parties by agreement have established the per se rule that there is just cause for termination. However, the language of Article 32 does not state that even in the presence of mitigating circumstances, insubordination still will necessarily provide the Company with just cause for termination. On the contrary, where significant, mitigating considerations are present, the culpability of the employee may be diminished, and summary termination may no longer be justified. This more complex fact situation must be considered under the general, just cause standard set forth in article 32, giving due weight to the fact that the parties have agreed that a pure case of insubordination, without mitigating considerations, would provide just cause to terminate." *Id.* at 47a.

2. Poland Spring brought suit under § 301 of the Labor Management Relations Act, 29 U.S.C. § 185, to vacate the award. The district court did vacate the award "[u]nder the authority of *S.D. Warren Co. v. United Paperworkers Int'l Union, Local 1069*, 845 F.2d 3, 7-8 (1st Cir. 1988), and *Georgia-Pacific Corp. v Local 27*, 864 F.2d 940, 944-45 (1st Cir. 1988)." Pet. App. 27a-28a. The First Circuit, on the authority of these two precedents, affirmed the vacation of the award, with Judge Lynch dissenting.

Judge Torruella, writing for the majority, explained that the First Circuit's *S.D. Warren/Georgia-Pacific* precedents establish the general rule that, "[i]f the language of an

agreement is clear and unequivocal, an arbitrator cannot give it a meaning other than that expressed by the agreement." Pet. App. 8a. And, the particular application of this rule that the court below found to govern this case was "that once an arbitrator finds that an employee has committed an act specifically listed in the collective bargaining agreement as providing just cause for termination, the arbitrator is not free to fashion a separate remedy apart from the one provided by the parties' agreement." *Id.* at 10a.

Separately concurring, Chief Judge Boudin observed that "[i]n [*Paperworkers v.*] *Misco*, 484 U.S. [29,] at 41-42 [(1987)], the Court said that an arbitrator could impose a lesser remedy than discharge, arguably in a situation not too far from our own." Pet. App. 19a. And, Judge Boudin added that "[i]f our own case were before us as the first one to arise after *Misco*, its proper disposition would present a difficult and interesting issue." *Id.* at 20a. However, he concluded that "[t]his debatable issue has been resolved in this circuit," because "*S.D. Warren* was decided after *Misco*—indeed, on remand after an earlier *S.D. Warren* decision had been vacated by the Supreme Court for reconsideration in light of *Misco*." *Id.* at 18a & 20a.

Dissenting from the First Circuit's decision, Judge Lynch "agree[d] that the district court could reasonably have concluded that it was bound to reverse the arbitrator under *Georgia-Pacific* or *S.D. Warren*." Pet. App. 21a (citations omitted). But she went on to state that it was "time for this court to disavow both of those cases as inconsistent with Supreme Court precedent." *Id.* at 25a. *See id.* at 22a-23a discussing *Paperworkers v. Misco, Inc.*, 484 U.S. 29 (1987), *Eastern Associated Coal Corp. v. Mine Workers*, 531 U.S. 57 (2000), and *Major League Baseball Players Ass'n v. Garvey*, 532 U.S. 504 (2001).

The court of appeals, with Judge Lynch dissenting and Judge Lipez recusing himself, denied the Union's petition for rehearing. Pet. App. 29a.

REASONS FOR GRANTING THE PETITION

Like the Ninth Circuit's decision in the *Garvey v. Baseball Players* litigation, the First Circuit decision in this case "conflicts with [this Court's] cases limiting review of an arbitrator's award entered pursuant to an agreement between an employer and a labor organization." *Major League Baseball Players' Ass'n v. Garvey*, 532 U.S. 504, 505 (2001), granting certiorari and reversing per curiam *Garvey v. Major League Baseball Players' Ass'n*, 243 F.3d 547 (9th Cir. 2000)(table). *See Paperworkers v. Misco, Inc.*, 484 U.S. 29 (1987); *Eastern Associated Coal Corp. v. Mine Workers*, 531 U.S. 57 (2000).

In *Garvey*, the Ninth Circuit proceeded in plain disregard of one of the fundamental limits on the judicial review of labor arbitration awards "by overturning the arbitrator's decision because [the court] disagreed with the arbitrator's factual findings" and "by resolving the merits of the parties' dispute on the basis of its own factual determinations." 532 U.S. at 510-511.

In the decisional line culminating in the instant case, the First Circuit has proceeded in an equally plain disregard of the other fundamental limit on the judicial review of labor arbitration awards by overturning a labor arbitration decision because the court disagrees with the arbitrator's view of the meaning of the labor contract and by resolving the merits of the parties' dispute on the basis of the court's own view of the contract's meaning.

The First Circuit's deviance from the limited review of labor arbitration awards dictated by this Court's cases has the most serious adverse effect on the labor relations system for

the voluntary settlement of workplace disputes promoted by the Labor Management Relations Act §§ 203(d) and 301(a). As this Court has explained, expansive judicial review of the kind the First Circuit practices "greatly undermine[s]" the LMRA system for the "speedy resolution of grievances by private mechanisms" and the "on-going process of collective bargaining." *Misco*, 484 U.S. at 38. And, as Circuit Judge Lynch observed, this adverse effect of the decision below is made all the more serious by the First Circuit's "intensifi[cation of] a circuit split" on a recurring issue with the courts of appeals that practice the limited review of labor arbitration awards dictated by this Court. Pet. App. 30a.

These precise parallels, we submit, make it manifest that here, as in *Baseball Players v. Garvey*, the Court should both grant certiorari and reverse the First Circuit's decision in order to maintain the integrity of the LMRA § 301 law governing the judicial review of labor arbitration awards and to assure that the § 301 law in this regard is, as Congress intended, uniform and consistent nationwide.

1. The salient point made by this Court's "cases limiting review of an arbitrator's award," *Garvey*, 532 U.S. at 505, is succinctly stated in *Misco*:

> "Because the parties have contracted to have disputes settled by an arbitrator chosen by them rather than by a judge, it is the arbitrator's view of the facts and of the meaning of the contract that they have agreed to accept. Courts thus do not sit to hear claims of factual or legal error by an arbitrator as an appellate court does in reviewing decisions of lower courts. *** The arbitrator may not ignore the plain language of the contract; but the parties having authorized the arbitrator to give meaning to the language of the agreement, a court should not reject an award on the ground that the arbitrator misread the contract. *** [T]he arbitrator's award settling a dispute with respect to the interpretation or application of a labor agreement must draw its

> essence from the contract and cannot simply reflect the arbitrator's own notions of industrial justice. But as long as the arbitrator is even arguably construing or applying the contract and acting within the scope of his authority, that a court is convinced he committed serious error does not suffice to overturn his decision." 484 U.S. at 37-38.

Accord Garvey, 532 U.S. at 509 ("Courts are not authorized to review the arbitrator's decision on the merits despite allegations that the decision . . . misinterprets the parties' agreement."); *Eastern Associated Coal*, 531 U.S. at 62 ("we must treat the arbitrator's award as if it represented an agreement between [the employer] and the union as to the proper meaning of the contract's words").

The upshot—as Seventh Circuit Judge Posner has so aptly put it—is that

> "the question for decision by a federal court asked to set aside an arbitration award . . . is not whether the arbitrator or arbitrators erred in interpreting the contract; it is not whether they clearly erred in interpreting the contract; it is not whether they grossly erred in interpreting the contract; it is whether they interpreted the contract. If they did, their interpretation is conclusive." *Hill v. Norfolk & Western Ry. Co.*, 814 F.2d 1192, 1194-95 (7th Cir. 1987) (citations omitted).

Accord Utility Workers Union of America, Local 246 v. NLRB, 39 F.3d 1210, 1216 (D.C. Cir. 1994) ("[A] federal district court presiding over a § 301 proceeding seeking enforcement of an arbitrator's award must give the award the greatest deference imaginable—the award must be enforced so long as the arbitrator purports to be interpreting the contract."); *Stead Motors v. Automotive Machinists Lodge 1173*, 886 F.2d 1200, 1205 (9th Cir. 1989) ("Since the labor arbitrator is designed to function in essence as the parties' surrogate, he cannot 'misinterpret' a collective bargaining

agreement . . ., 'he is speaking for the parties, and his award *is* their contract.'").

In contrast, the First Circuit does not begin and end by asking the single dispositive question of whether the arbitrator's award rests on the arbitrator's "interpretation of the contract." Instead, the First Circuit proceeds by first asking whether the arbitrator had authority to interpret the contract and then answering that question by undertaking an independent judicial interpretation of the contract to ascertain whether its language is susceptible to only a single meaning—which the First Circuit regards as negating the arbitrator's authority to interpret the contract—or is susceptible to different meanings—which does afford the arbitrator authority to interpret the contract.

On the First Circuit's approach, the rule that a court "cannot vacate the award because the arbitrator misreads the contract" applies *only* "where there is room [for the arbitrator] to do so [*viz.*, to read the contract]." *Georgia-Pacific Corp. v Local 27*, 864 F.2d 940, 944 (1st Cir. 1988). According to the First Circuit, there is "room" for the arbitrator to read—and perforce to possibly misread—the labor contract, only where *the court* concludes that "the language of the underlying contract, taken in context and with due regard for the surrounding circumstances, is fairly susceptible to differing meanings." *Exxon Corp v. Esso Workers Union*, 118 F.3d 841, 845 (1st Cir. 1997), quoting *El Dorado Technical Services v. Union General De Trabajadores*, 961 F.2d 317, 320 (1st Cir. 1992). But, says the First Circuit, "[a]n arbitrator . . . may *not* . . . interpret a clause or provision when [the court finds that] its language is clear, unequivocal and unambiguous." *Strathmore Paper Co. v. Paperworkers*, 900 F.2d 423, 426 (1st Cir. 1990) (emphasis added).

2. The extent to which the First Circuit has usurped the arbitrator's contract interpretation authority is vividly illustrated by the instant case.

Following the *S.D. Warren/Georgia-Pacific* approach, the First Circuit majority concluded that "the plain language of Articles 32 and 33 left nothing to the arbitrator's discretion except to determine whether or not Beaupre's conduct was insubordination." Pet. App. 11a. On the court's reading of these clauses, "once an arbitrator finds that an employee has committed an act specifically listed in the collective bargaining agreement as providing just cause for termination, the arbitrator is not free to fashion a separate remedy apart from the one provided by the parties." *Id.* at 10a. For that reason, said the court below, the arbitrator here erred in "distinguish[ing] straightforward insubordination from insubordination with mitigating circumstances." *Id.* at 6a. "Upon reaching the conclusion that Beaupre's conduct was insubordinate, the arbitrator was 'barred from further inquiry because such additional probing constituted "ignoring the plain language of the contract."'" *Id.* 10a, quoting *Georgia-Pacific*, 864 F.2d at 945 (quoting *Misco*, 484 U.S. at 38).

Significantly, while the First Circuit majority stated that the arbitrator's interpretation of the collective bargaining agreement must be rejected as precluded by the "plain language" of Article 32, the majority also acknowledged that, in other—albeit closely related—respects, Article 32 does not in truth have the simple "plain language" meaning the court assigned to it in overturning the arbitrator's award.

The core requirement of Article 32 is that "[d]iscipline shall only occur for just cause." Pet. App. 50a. The clause goes on to state that "[t]he parties agree that just cause for discharge shall include, but not be limited to, the following" 21 types of employee conduct, including "insubordination." *Id.* The First Circuit majority recognized, however, that "minor" or "trivial" instances of insubordination would *not* constitute "just cause" for discharge, even though, as the court stressed in rejecting the arbitrator's decision, "insubordination"—without any such qualification—is one of

the 21 types of employee conduct listed in Article 32. Pet. App. 14a & 17a.[1]

Thus, the First Circuit majority at one and the same time opined that the plain language of Article 32 does *not* make "minor" or "trivial" instances of the types of employee conduct listed there "just cause" for discharge *per se* but insisted that the plain language *does* unequivocally and unambiguously make instances of the listed types of conduct with "mitigating circumstances" just cause for discharge *per se*. Purely as a matter of contract interpretation, it is impossible to see why the language does admit of a "trivial" or "minor" instances limitation but precludes a "mitigating circumstances" limitation. Indeed, as Judge Boudin observed, the two types of limitations tend to merge as "lack of . . . severity . . . could be viewed as a mitigating consideration." Pet. App. 17a.

As the foregoing indicates, and as Judge Boudin appreciated, it is unlikely in the extreme that Article 32 plainly and unequivocally stands for the proposition that the employer has just cause *per se* to discharge an employee whose "lack of cleanliness" was directly caused by performing his job, even if the employee were more than "trivial[ly]"

---

[1] Chief Judge Boudin elaborated on this point in his concurring opinion:

> "Here, the arbitrator could permissibly have read the contract to mean that some acts of disobedience constitute 'insubordination' within the meaning of the contract and that other, less severe acts—although literally disobedience—do not. 'Insubordination' is not defined in the contract nor is it self-defining and, reading the provision in context, a judge (and even more surely an arbitrator) would be likely to exclude trivial disobedience, such as a refusal to light the supervisor's cigarette. Consider that lack of cleanliness is also listed as a basis for discharge under this contract, but certainly a smudge on a nose would not qualify for discharge. So, taking account of the severity of the disobedience is, within broad limits, surely a part of the arbitrator's authority." Pet. App. 16a-17a.

unclean, or that the employer has just cause *per se* to discharge an employee who is "reading on duty" while he stands by without an assignment during an equipment breakdown. Each of these cases involves a non-trivial instance of employee conduct listed in Article 32, but the surrounding circumstances make the conduct transparently less than "just cause" for discharge.[2]

The sum of this matter of the arbitrator's contract interpretation authority is, as the Seventh Circuit has recognized, that "contracts have implied as well as express terms" and it follows that "the authority of an arbitrator to interpret a collective bargaining contract includes the power to discover such terms." *Ethyl Corp.*, 768 F.2d at 186. As the Seventh Circuit added in this regard, "there is no rule that an arbitrator, in order to find an implied condition, must first find the language of the contract to be ambiguous;" even where "a literal reading of the contract . . . would preclude the

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[2] There is, moreover, no difficulty in thinking of hypotheticals that would "test[] the company's commitment to literal interpretation." *Ethyl Corp. v. Steelworkers*, 768 F.2d 180, 186 (7th Cir. 1985). Consider, for example, the issue of "intoxicants," which is dealt with twice in Article 32:

> "3. Reporting for duty under the influence of intoxicants or drugs;
>
> "4. Bringing intoxicants or drugs into the operation." Pet. App. 50a.

Read literally, items 3 and 4 would *not* cover an employee who became intoxicated after "reporting for duty" by consuming substances brought "into the operation" by someone else. Nevertheless, these items are obviously intended to cover such conduct. And, an arbitrator who concluded that the care with which the issue of intoxicants was addressed—two separate items, carefully phrased to specify "reporting for duty" as opposed to "being on duty under the influence" and "bringing intoxicants into the operation" as opposed to "possessing" them—indicated an intention to protect from discharge an employee who became intoxicated on the job would be rendering a very foolish—although literal—interpretation of the clause.

implied condition that the arbitrator found," that is not dispositive, because "he [i]s not obliged to read the contract literally." *Id.*

The First Circuit's *S.D. Warren/Georgia-Pacific* approach, by arrogating to the courts the authority to interpret labor contracts literally according to their plain language (as the court reads that language), thus usurps the arbitrator's authority to interpret those contracts according to their "express terms" and their "implied terms." This is contrary to this Court's *Misco/Eastern Associated Coal/Garvey* cases "limiting review of arbitration awards." *Garvey*, 532 U.S. at 510.

3. It is apparent from the face of the award here that the arbitrator did not transgress his contractual interpretation authority by "ignoring the plain language of the contract," Pet. App. 10a, as the First Circuit majority charged, but rather properly exercised that authority and concluded that the literal language of the contract has a narrower meaning than the First Circuit majority attributed to that language.

The arbitrator carefully considered Poland Spring's argument "that Article 32 of the labor agreement clearly and unambiguously states that when an employee commits an act of insubordination, that by definition constitutes just cause for termination" so that "the arbitrator lacks authority to reduce a termination to a lesser level of discipline, once the offense of insubordination has been proven." Pet. App. 46a. The arbitrator did so by acknowledging "[t]hat [the] language [of Article 32] may well establish that in clear, straight-forward cases of insubordination, without mitigating considerations, the parties by agreement have established the per se rule that there is just cause for termination." *Id.* at 47a. He then added, "[h]owever, the language of Article 32 does not state that even in the presence of mitigating circumstances, insubordination still will necessarily provide the Company with just cause for termination." *Id.* He concluded, "[o]n the contrary, where significant, mitigating considerations are

present, the culpability of the employee may be diminished, and summary termination may no longer be justified." *Id.*

Having found that the labor contract does *not* state a *per se* rule justifying termination for insubordination "in the presence of mitigating circumstances," the arbitrator explained that the "more complex fact situation" presented by such circumstances "must be considered under the general, just cause standard set forth in article 32, giving due weight to the fact that the parties have agreed that a pure case of insubordination, without mitigating considerations, would provide just cause to terminate." Pet. App. 47a.

Far from "ignor[ing] the plain language of the contract," the arbitrator endeavored to "give meaning to the language of the agreement" by "construing [and] applying the contract" to the particular dispute brought before him for resolution. *Misco*, 484 U.S. at 38.

So we are not misunderstood, the dispositive point is that under this Court's cases the arbitrator acted within his authority to interpret the contract in reading Article 32 as he did and that, under this Court's *Misco/Eastern Associated Coal/Garvey* cases, the First Circuit had no authority to reject that interpretation in favor of its own literal interpretation; it is *not* that the arbitrator's interpretation is the only right interpretation and that a literal interpretation is an erroneous interpretation.

In *Misco*, the contractual provision at issue—Rule II.1—was similar to Article 32 in that it "list[ed] . . . causes for discharge." 484 U.S. at 32 n. 2. The *Misco* Court recognized that "it may be, as the Company argues, that under the contract involved here, it was within the unreviewable discretion of management to discharge an employee once a violation of Rule II.1 was found." 484 U.S. at 41. But, said the *Misco* Court, "[b]efore disposing of the case on the ground that Rule II.1 had been violated and discharge was

therefore proper, the proper course would have been remand to the arbitrator *for a definitive construction of the contract in this respect.*" *Id.* at 42 (emphasis added).

The error of the court below was, thus, *not* in reading Article 32 as a provision that makes the 21 types of employee conduct listed there *per se* grounds for a just cause discharge. Rather, the court's error was in treating that Article as "tak[ing] discretion away from arbitrators," Pet. App. 10a, to rule on whether such conduct constitutes just cause for discharge *per se*, so that an arbitrator who reads the Article differently than the court must be deemed to have "exceeded his authority," *id.* at 12a n. 2.

As *Misco* makes clear, it is the arbitrator, not the courts, who has the authority to "definitive[ly] construe[]" labor contract clauses such as Article 32. 484 U.S. at 42.

CONCLUSION

The petition for a writ of certiorari should be granted and the decision of the court below should be reversed.

Respectfully submitted,

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